

## EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2008-0369-MLM-E TCEQ ID: RN101498913 CASE NO.: 35481

RESPONDENT NAME: CITY MARKET GROUP OF SUN CITY, L.P. DBA CITY MARKET

## ORDER TYPE:

<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

## CASE TYPE:

<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER

SITE WHERE VIOLATION(S) OCCURRED: 440 Del Webb Boulevard, Suite 200, Georgetown, Williamson County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: ☒ Yes ☐ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired April 5, 2009. No comments were received.

## CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Steven Lopez, Waste Enforcement Section, MC 128, (512) 239-1896

TCEQ Regional Contact: Mr. Barry Kalda, Austin Regional Office, MC R-11, (512) 339-2929

Respondent: Mr. Joe D. Savage, Managing Partner, City Market Group of Sun City, L.P., 440 Del Webb Boulevard, Suite 200,  
Georgetown, Texas 78626

Respondent's Attorney: Not represented by counsel on this enforcement matter.

DOCKET NO.: 2008-0369-MLM-E

## VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> December 13, 2007</p> <p><b>Date of NOE Relating to this Case:</b> February 20, 2008</p> <p><b>Background Facts:</b> The EDRP was filed July 9, 2008. The Respondent filed an answer and the matter was referred to SOAH. The agreed order was signed January 29, 2009.</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>MLM:</b></p> <p>1. Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>2. Failed to conduct effective manual or automatic inventory control procedures for the UST system [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>3. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p> <p>4. Failed to ensure that each vapor balance system vent line is equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch [30 TEX. ADMIN. CODE § 115.222(6) and TEX. HEALTH AND SAFETY CODE § 382.085(b)].</p> <p>5. Failed to provide a functioning continuous monitoring leak detection system that is capable of immediately alerting of possible leakages [30 TEX. ADMIN. CODE § 213.5(d)(1)].</p>	<p><b>Total Assessed:</b> \$11,875</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$595/\$11,280</p> <p>The Respondent paid \$595 of the administrative penalty. The remaining amount of \$11,280 shall be payable in 24 monthly payments of \$470 each.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b> The Executive Director recognizes that as of January 22, 2009, the Respondent implemented the following corrective measures at the Facility:</p> <ol style="list-style-type: none"> <li>1. Implemented a release detection method for all USTs at the Station;</li> <li>2. Began conducting proper inventory control procedures for all USTs at the Station;</li> <li>3. Permanently applied or affixed tags, labels, or markings to the UST fill tubes; and</li> <li>4. Installed a pressure-vacuum relief valve in the vent line.</li> </ol> <p><b>Ordering Provisions:</b> The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 30 days install and implement a continuous monitoring leak detection system.</li> <li>2. Within 45 days, submit written certification to demonstrate compliance with this Ordering Provision.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

<b>DATES</b>	Assigned	25-Feb-2008	Screening	29-Feb-2008	EPA Due	
	PCW	23-Jan-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	City Market Group of Sun City, L.P. dba City Market
Reg. Ent. Ref. No.	RN101498913
Facility/Site Region	11-Austin
Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	35481	No. of Violations	5	
Docket No.	2008-0369-MLM-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Steven Lopez	
Multi-Media	Edwards Aquifer	EC's Team	Enforcement Team 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$9,500**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **25% Enhancement** **Subtotals 2, 3, & 7** **\$2,375**

Notes: Enhancement for one 1660 order and one NOV with same or similar violations.

**Culpability** **No** **0% Enhancement** **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** **0% Reduction** **Subtotal 5** **\$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

**Total EB Amounts** **\$1,114** **0% Enhancement\*** **Subtotal 6** **\$0**  
**Approx. Cost of Compliance** **\$17,116** **\*Capped at the Total EB \$ Amount**

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$11,875**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$11,875**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$11,875**

**DEFERRAL** **0% Reduction** **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** **\$11,875**

Screening Date 29-Feb-2008

Docket No. 2008-0369-MLM-E

PCW

Respondent City Market Group of Sun City, L.P. dba City Market

Policy Revision 2 (September 2002)

Case ID No. 35481

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN101498913

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one 1660 order and one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 25%

<b>Screening Date</b> 29-Feb-2008		<b>Docket No.</b> 2008-0369-MLM-E		<b>PCW</b>																			
<b>Respondent</b> City Market Group of Sun City, L.P. dba City Market		<small>Policy Revision 2 (September 2002)</small>																					
<b>Case ID No.</b> 35481		<small>PCW Revision February 29, 2008</small>																					
<b>Reg. Ent. Reference No.</b> RN101498913																							
<b>Media [Statute]</b> Petroleum Storage Tank																							
<b>Enf. Coordinator</b> Steven Lopez																							
<b>Violation Number</b>		<input type="text" value="1"/>																					
<b>Rule Cite(s)</b>		<input type="text" value="30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)"/>																					
<b>Violation Description</b>		<input type="text" value="Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) ."/>																					
<b>Base Penalty</b>				<input type="text" value="\$10,000"/>																			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																							
<b>OR</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <th colspan="3">Harm</th> <td></td> </tr> <tr> <td><b>Release</b></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td><b>Actual</b></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;"><b>Percent</b> <input type="text" value="25%"/></td> </tr> <tr> <td><b>Potential</b></td> <td><input type="text" value="x"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>					Harm				<b>Release</b>	Major	Moderate	Minor		<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>	<b>Potential</b>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>
		Harm																					
	<b>Release</b>	Major	Moderate	Minor																			
<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>																			
<b>Potential</b>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>																				
<b>&gt;&gt; Programmatic Matrix</b>																							
<b>Matrix Notes</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td><b>Falsification</b></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;"><b>Percent</b> <input type="text" value="0%"/></td> </tr> <tr> <td></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>					Major	Moderate	Minor		<b>Falsification</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>		<input type="text"/>	<input type="text"/>	<input type="text"/>					
		Major	Moderate	Minor																			
	<b>Falsification</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>																		
	<input type="text"/>	<input type="text"/>	<input type="text"/>																				
<input type="text" value="Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation."/>																							
<b>Adjustment</b>				<input type="text" value="\$7,500"/>																			
				<input type="text" value="\$2,500"/>																			
<b>Violation Events</b>																							
<b>Number of Violation Events</b>		<input type="text" value="1"/>	<input type="text" value="78"/>	<b>Number of violation days</b>																			
<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$2,500"/>																				
	monthly	<input type="text"/>																					
	quarterly	<input type="text" value="x"/>																					
	semiannual	<input type="text"/>																					
	annual	<input type="text"/>																					
	single event	<input type="text"/>																					
One quarterly event is recommended from the December 13, 2007 investigation date to the February 29, 2008 screening date.																							
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>																				
<b>Estimated EB Amount</b>		<input type="text" value="\$72"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$3,125"/>																				
			<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$3,125"/>																				

## Economic Benefit Worksheet

Respondent City Market Group of Sun City, L.P. dba City Market

Case ID No. 35481

Reg. Ent. Reference No. RN101498913

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	13-Dec-2007	29-Nov-2008	1.0	\$72	n/a	\$72

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs at the Facility. The Date Required is the date of the investigation. The Final Date is the expected date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$72

<b>Screening Date</b> 29-Feb-2008		<b>Docket No.</b> 2008-0369-MLM-E		<b>PCW</b>
<b>Respondent</b> City Market Group of Sun City, L.P. dba City Market		<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 35481		<i>PCW Revision February 29, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN101498913				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Steven Lopez				
<b>Violation Number</b>		<input type="text" value="2"/>		
<b>Rule Cite(s)</b>		<input type="text" value="30 Tex. Admin. Code § 334.48(c)"/>		
<b>Violation Description</b>		<input type="text" value="Failed to conduct effective manual or automatic inventory control procedures for the UST system."/>		
<b>Base Penalty</b>				<input type="text" value="\$10,000"/>

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Release</b>	<b>Harm</b>			
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>

**Matrix Notes** Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment**

**Violation Events**

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="78"/>	Number of violation days
---	---------------------------------	--------------------------

	daily	<input type="text"/>		<b>Violation Base Penalty</b> <input type="text" value="\$2,500"/>
	monthly	<input type="text"/>		
	quarterly	<input checked="" type="checkbox"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
<small>mark only one with an x</small>	single event	<input type="text"/>		

One quarterly event is recommended from the December 13, 2007 investigation date to the February 29, 2008 screening date.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$22"/>	Violation Final Penalty Total <input type="text" value="\$3,125"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,125"/>	

**Economic Benefit Worksheet**

Respondent City Market Group of Sun City, L.P. dba City Market

Case ID No. 35481

Reg. Ent. Reference No. RN101498913

Media Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	13-Dec-2007	29-Oct-2008	0.9	\$22	n/a	\$22

Notes for DELAYED costs

Estimated cost to conduct inventory control procedures. The Date Required is the date of the investigation. The Final Date is the expected date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$22



Screening Date 29-Feb-2008

Docket No. 2008-0369-MLM-E

PCW

Respondent City Market Group of Sun City, L.P. dba City Market

Policy Revision 2 (September 2002)

Case ID No. 35481

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN101498913

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description

Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

78 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the December 13, 2007 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

## Economic Benefit Worksheet

**Respondent** City Market Group of Sun City, L.P. dba City Market

**Case ID No.** 35481

**Reg. Ent. Reference No.** RN101498913

**Media** Petroleum Storage Tank

**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$30	13-Dec-2007	29-Nov-2008	1.0	\$1	n/a	\$1

**Notes for DELAYED costs**

Estimated cost to label the tank fill ports. The Date Required is the investigation date and the Final Date is estimated date of compliance.

**Avoided Costs**
**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs**
**Approx. Cost of Compliance**
**\$30**
**TOTAL**
**\$1**

Screening Date 29-Feb-2008

Docket No. 2008-0369-MLM-E

PCW

Respondent City Market Group of Sun City, L.P. dba City Market

Policy Revision 2 (September 2002)

Case ID No. 35481

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN101498913

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 115.222(6) and Tex. Health and Safety Code § 382.085(b)

Violation Description

Failed to ensure that each vapor balance system vent line is equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch. Specifically, the vent line was not equipped with a pressure-vacuum relief valve.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

78 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the December 13, 2007 investigation date to the February 29, 2008 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

## Economic Benefit Worksheet

**Respondent** City Market Group of Sun City, L.P. dba City Market

**Case ID No.** 35481

**Reg. Ent. Reference No.** RN101498913

**Media** Petroleum Storage Tank

**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment	\$86	13-Dec-2007	29-Nov-2008	1.0	\$0	\$6	\$6
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to have a pressure-vacuum relief valve installed. The Date Required is the investigation date and the Final Date is estimated date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$86

**TOTAL**

\$6

Screening Date 29-Feb-2008

Docket No. 2008-0369-MLM-E

PCW

Respondent City Market Group of Sun City, L.P. dba City Market

Policy Revision 2 (September 2002)

Case ID No. 35481

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN101498913

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 213.5(d)(1)

Violation Description Failed to provide a functioning continuous monitoring leak detection system that is capable of immediately alerting of possible leakages.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1 78 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the investigation date of December 13, 2007 to the screening date of February 29, 2008.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1,013

Violation Final Penalty Total \$3,125

This violation Final Assessed Penalty (adjusted for limits) \$3,125

## Economic Benefit Worksheet

Respondent City Market Group of Sun City, L.P. dba City Market

Case ID No. 35481

Reg. Ent. Reference No. RN101498913

Media Petroleum Storage Tank

Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment	\$15,000	13-Dec-2007	29-Nov-2008	1.0	\$48	\$964	\$1,013
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install interstitial monitoring for release detection. The Date Required is the date of investigation. The Final Date is the estimated date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$15,000

TOTAL

\$1,013

# Compliance History

Customer/Respondent/Owner-Operator:	CN602735722	City Market Group of Sun City, L.P.	Classification: AVERAGE	Rating: 16.00
Regulated Entity:	RN101498913	CITY MARKET	Classification: AVERAGE	Site Rating: 16.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	70055	
Location:	440 DEL WEBB BLVD, SUITE 200, GEORGETOWN, TX, 78628		Rating Date: September 01 07 Repeat Violator: NO	
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	March 12, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 12, 2003 to March 12, 2008			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Steven Lopez Phone: 512-239-1896

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? City Market Group of Sun City, L.P.
4. If Yes, who was/were the prior owner(s)? Chapman's Grocery, Inc.
5. When did the change(s) in ownership occur? 11/05/2004

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
 

Effective Date: 09/30/2005 ADMINORDER 2004-1820-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)  
30 TAC Chapter 37, SubChapter I 37.815(b)

Description: As owner and operator of the Facility, Chapman's Grocery is alleged to have failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground...
- B. Any criminal convictions of the state of Texas and the federal government.
 

N/A
- C. Chronic excessive emissions events.
 

N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

1 06/24/2003 (276661)  
2 10/01/2004 (290424)  
3 02/19/2008 (611932)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date: 06/24/2003 (276661)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)  
30 TAC Chapter 37, SubChapter I 37.815(b)

Description: Failure to provide acceptable financial assurance
- F. Environmental audits.
 

N/A
- G. Type of environmental management systems (EMSs).
 

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY MARKET GROUP OF SUN  
CITY, L.P. DBA CITY MARKET  
RN101498913**

§  
§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2008-0369-MLM-E**

## **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City Market Group of Sun City, L.P. dba City Market ("City Market") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and City Market appear before the Commission and together stipulate that:

1. City Market owns and operates a convenience store with retail sales of gasoline at 440 Del Webb Boulevard, Suite 200 in Georgetown, Williamson County, Texas (the "Station").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382, TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and City Market agree that the Commission has jurisdiction to enter this Agreed Order, and that City Market is subject to the Commission's jurisdiction.
4. City Market received notice of the violations alleged in Section II ("Allegations") on or about February 25, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by City Market of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of eleven thousand eight hundred seventy-five dollars (\$11,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). City Market has paid five hundred ninety-five dollars (\$595.00) of the administrative penalty. The remaining amount of eleven thousand two hundred eighty dollars (\$11,280.00) of the administrative penalty shall be payable in twenty four monthly payments of four hundred seventy dollars (\$470.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If City Market fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of City Market to meet the payment schedule of this Agreed Order constitutes the failure of City Market to timely and satisfactorily comply with all of the terms of this Agreed Order.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and City Market have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that City Market has implemented the following corrective measures at the Station as of January 22, 2009 in response to this enforcement action:
  - a. Implemented a release detection method for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.50;
  - b. Began conducting proper inventory control procedures for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.48;
  - c. Permanently applied or affixed tags, labels, or markings to the UST fill tubes, in accordance with 30 TEX. ADMIN. CODE § 334.8; and
  - d. Installed a pressure-vacuum relief valve in the vent line, in accordance with 30 TEX. ADMIN. CODE § 115.222.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if

the Executive Director determines that City Market has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

City Market is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), as documented during an investigation conducted on December 13, 2007.
2. 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for the UST system, as documented during an investigation conducted on December 13, 2007.
3. 30 TEX. ADMIN. CODE § 334.8(c)(5)(C) by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form, as documented during an investigation conducted on December 13, 2007.
4. 30 TEX. ADMIN. CODE § 115.222(6) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to ensure that each vapor balance system vent line is equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch, as documented during an investigation conducted on December 13, 2007. Specifically, the vent line was not equipped with a pressure-vacuum relief valve.
5. 30 TEX. ADMIN. CODE § 213.5(d)(1) by failing to provide a functioning continuous monitoring leak detection system that is capable of immediately alerting of possible leakages, as documented during an investigation conducted on December 13, 2007.

### III. DENIALS

City Market generally denies each allegation in Section II ("Allegations").

### IV. ORDER

1. It is, therefore, ordered by the TCEQ that City Market pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and City Market's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: City Market Group of Sun City, L.P. dba City Market, Docket No. 2008-0369-MLM-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. City Market shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, City Market shall install and implement a continuous monitoring leak detection system, in accordance with 30 TEX. ADMIN. CODE § 213.5.
  - b. Within 45 days after the effective date of this Agreed Order, City Market shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section, Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
2800 S IH 35, Suite 100  
Austin, Texas 78704-5712

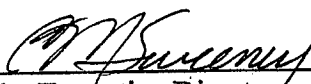
3. The provisions of this Agreed Order shall apply to and be binding upon City Market. City Market is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If City Market fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, City Market's failure to comply is not a violation of this Agreed Order. City Market shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. City Market shall notify the Executive Director within seven days after City Market becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by City Market shall be made in writing to the Executive Director. Extensions are not effective until City Market receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against City Market in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to City Market, or three days after the date on which the Commission mails notice of the Order to City Market, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
For the Executive Director


March 3, 2009  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

1-28-09  
Date

Joe Savage  
Name (Printed or typed)  
Authorized representative of  
City Market Group of Sun City, L.P. dba City Market

Managing Partner  
Title